



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,337	03/04/2002	Monica A. Hamer	496.022US2	3950

7590 12/15/2003

Mark A. Litman & Associates, P.A.
York Business Center, Suite 205
3209 West 76th St.
Edina, MN 55435

EXAMINER

LE, HOA T

ART UNIT	PAPER NUMBER
----------	--------------

1773

DATE MAILED: 12/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/090,337

Applicant(s)

HAMER ET AL.

Examiner

H. T. Le

Art Unit

1773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 13, 14, 19, 20, 22 and 23 is/are rejected.
- 7) ☐ Claim(s) 9-12, 15-18 and 21-23 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3. 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 4-6, 13, 22 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In all these claims, "bead" or "beads" have no clear antecedent basis.

In claims 22 and 23, "droplets" has no antecedent basis.

Claim Rejections - 35 USC § 102/103

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-8, 13, 14, 19 and 20 are rejected under 35 U.S.C. 102 (e) as anticipated by Inoulalen et al (US 6,572,892).*

Claim 1: Inoulalen et al disclose stable beads comprising a blend of bases including waxes or lipophilic (oleophilic) oils and a gelling agent. See col. 3, lines 20-48 and col. 7, lines 29-34.

The bases containing waxes and/or oils as described and exemplified in the reference (col. 3, lines 20-48) satisfy the claimed language of organic oleophilic liquid at 75 °C. The beads

have a particle size from 1 to 10 mm (see col. 5, lines 60-62). The concentration of the gelling agent in the beads is from 0.1 wt% to 50wt% in relation to the total weight of the gel and the organic material (i.e. waxes and oils) is from 0.1 to 40wt% of the gel composition. Thus the proportion of the gelling agent to the organic material being 0.1/40 to 50/40 that is 0.025 to 1.25 that is 2.5 % to 125 % which overlaps the claimed proportion of 0.05 to 70 wt%.

Claim 2: col. 7, lines 29-34.

Claim 3: See col. 3, lines 15-48.

Claim 4: See col. 8, lines 5-7.

Claims 5 & 6: See the rejection of claim 1.

Claim 7: the waxes as described at col. 3, lines 20-31 are solid at room temperature.

Claim 8: See col. 6, line 65 to col. 7, line 24.

Claim 13: Mixing temperature: See col. 7, lines 5-7: if the mixing temperature is 2 or 3 °C above the highest melting point of the components in the mixture, it is inherently necessary that the mixing temperature is at least 5 °C above the solidification temperature of the mixture. Cooling temperature: see col. 8, lines 13-15: the cooling temperature is 15 °C which is 10 degrees below the room temperature which is the solidification temperature of the mixture.

Claim 14: col. 7, lines 29-34.

Claim 19: See col. 8, lines 5-7.

Claim 20: The beads have a particle size from 1 to 10 mm (see col. 5, lines 60-62). The concentration of the gelling agent in the beads is from 0.1 wt% to 50wt% in relation to the total weight of the gel and the organic material (i.e. waxes and oils) is from 0.1 to 40 wt% of the gel composition. Thus the proportion of the gelling agent to the organic material being 0.1/40 to 50/40 that is 0.025 to 1.25 that is 2.5 % to 125 % which overlaps the claimed proportion of 0.05 to 30 wt%.

Allowable Subject Matter

4. Claims 9-12, 15-18 and 21-23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
5. Claims 22 and 23 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.
6. The following is a statement of reasons for the indication of allowable subject matter: None of the prior art references of record teach or suggest the process step of cooling in order to obtain distinct particles or particular shape or network within the particles formed of a fluid material.
7. References are cited as art of interest.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to H. T. Le whose telephone number is 703-308-2415. The examiner can normally be reached on 10:00 a.m. to 6:30 p.m., Mondays to Friday.

H. T. Le
Primary Examiner
Art Unit 1773

A handwritten signature in black ink, appearing to read 'H. T. Le', is written over the printed name.